CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.825, 843 & 955/98

Date of Decision: 28.06.2002

Shri A.K. Devnani. & Ors. — Applicant(s)

Shri A.I. Bhatkar. — Advocate for applicants

Versus

Union of India & others. — .. Respondents

Shri V.S. Masurkar. — Advocate for Respondents

CORAM: HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)
HON'BLE SHRI SHANKER RAJU. MEMBER (J)

(1) To be referred to the Reporter or not? ✓

(2) Whether it needs to be circulated to other Benches of the Tribunal? ✗

(3) Library ✓

(SMT. SHANTA SHASTRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NOS;825/98
843/98 AND 955/98
DATED THE DAY OF JUNE,2002

CORAM: HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)
HON'BLE SHRI SHANKAR RAJU, MEMBER(J)

1. A.K.Devnani, UDC,
presently working in Naval
Pay Office, Mumbai and
residing at 310-A, Ramayan
Nagar, Ulhasnagar-421 003.
Thane Dist.

2. S.B.Prasad, UDC,
presently working as Naval
Pay Office, Mumbai and
residing at CGS Quarters,
Flat No.30/376 Sector III,
Kane Nagar, Antop Hill,
Mumbai - 400 037.

3. Smt.Bela Karmakar, UDC
presently working in Naval
Pay Office, Mumbai and
residing at Nau Samrakshan
Co-op Hsg Society,
Building No.C-4, Room No.11,
Malad (W), Mumbai - 400 064.

4. Smt.M.M.Rane, UDC,
presently working in Naval
Pay Office, Mumbai and
residing at Plot No.7, Room No.6
Bhavishyadeep Co-op. Hsg. Society,
Amboli Ramesh Nagar,
Andheri (West),
Mumbai - 400 058.

5. R.C.Kotian, UDC,
presently working in Headquarters,
Western Naval Command,
Mumbai, and residing at
C-47, Raj Vaibhav Co-op. Hsg. Society,
Yogi Nagar Road, Borivli(W),
Mumbai - 400 091.

6. H.Rebello, UDC,
presently working in Material
Organisation, Mumbai and
residing at A/4/14, Sunder Nagar,
Kalina, Mumbai - 400 098. ... Applicants in
OA-825/1998

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1. P.A.Tambe, UDC,
presently working in
Materials Organisation,
Mumbai, residing at P-12/10,
SPDC Colony, Mankhurd,
Mumbai - 400 088.

2. Ms.Alka G Vijayakar, UDC,
presently working in Naval,
Dockyard, Mumbai and
residing at 188/B,
Bhimraowadi, Thakurdwar,
Mumbai - 400 002.

3. K.V.Salgunan, UDC,
presently working in
Commodore Bureau of Sailors,
residing at 57/4,
NCH Colony, Pawai,
Mumbai - 400 078.

4. A.N.Thakur, UDC,
presently working in
Commodore Bureau of Sailors,
residing at Patke Building,
1st Floor, Pannalal Ghosh Marg,
Malad(West),
Mumbai - 400 064.

5. S.R.Nerurkar, UDC,
presently working in
Material Organisation,
Mumbai, and residing at
220/3137, Sector-I,
CGS Quarters, Kane Nagar,
Antop Hill, Mumbai - 400 037.

6. D.M.Tikekar, UDC,
presently working in M.O.
residing at Santoshimata Co-op.
Hsg. Society, R.No.401,
Kajupada, Ghatkopar,
Mumbai - 400 084. ... Applicants in OA 843/1998

1. Bavdar Dhyandas Nagad, UDC,
presently working at INS Valsura
Jamnagar, residing at Saraswati
Housing Society, Navagaon (Ghed),
Jamnagar - 361 008 ... Applicant in OA 955/1998

By Advocate Shri A.I.Bhatkar

V/s.

1. Union of India
through the Secretary,
Ministry of Defence,
DHQ PO, New Delhi - 110 011

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2. The Chief of the Naval Staff,
Naval Headquarters,
Sena Bhavan, DHQ PO,
New Delhi - 110 011.

3. The Flag Officer Commanding-in-
Chief, Headquarters,
Western Naval Command,
Shahid Bhagat Singh Road,
Mumbai - 400 001. ... Respondents in OA Nos.825/1998, 843/1998 and 955/1998

By Advocate Shri V.S.Masurkar

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

All these three OAs 825/98, 843/98 and 955/98 involve a common issue of law and facats are also similar and the advocates are also the same, we therefore proceed to dispose of all the three OAs together by a common order.

In the year 1979 vide Ministry of Defence letter dated 29th June, 1999 a scheme was introduced for granting special pay to the UDCs for handling complex nature of work and competence to deal with such cases and for this purpose 10% of the posts of UDCs were upgraded to the grade of Assistant in the scale of Rs.425-800 in 1996. This was introduced in non-secretariat administrative offices where no intervening post between OS and UDC existed. Further clarifications were issued regarding selection of UDC for grant of such special pay. Upto 1994 the special pay was granted after an approval was confirmed on the

basis of selection method by the DPC. This method was discontinued in January, 1995 as per Ministry of Defence letter dated 19th January, 1995. Thereafter from January, 1995 onwards the selection was carried out on seniority cum fitness. All the applicants, except applicant No.1 in OA 825/98 and applicant No.5 in OA No.848/98 were granted special pay by holding DPC on seniority cum fitness basis. Orders were issued on 01st July, 1996granting special pay to those UDCs who were included in the select list.

2. Thereafter, the recommendations of the 5th pay Commission were received. The 5th pay Commission recommended in para 46.17 that 10% of posts in subordinate offices having no intervening grade above the level of UDC be upgraded to the level of Assistant. It was further clarified in para 109.7 that 10% posts of UDC in the subordinate offices to which the special pay was attached may be revised in higher scale corresponding to Rs.1600-2660 and the special pay be simultaneously withdrawn and in pursuance of these recommendations a letter was issued on 23rd June, 1998 upgrading 152 posts of UDC in the Navy to the grade of Assistant (earlier OS Grade II) in the pay scale of Rs.5000 - 8000 with corresponding reduction in the strength of UDC simultaneously. The scheme of granting special pay of Rs.70/- per month to UDC performing complex nature of duty also was terminated. The

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upgraded posts were merged in the post of Assistant redesignated from the post of earlier OS Grade-II. It was also advised in this letter that the post shall be filled by holding DPC as per the recruitment rules. The respondents held DPC accordingly and thereafter issued the panel for promotion to the post of Assistant vide letter dated 22nd September, 1998. The panel comprises of 111 persons. The names of the applicants did not appear in this list. Being aggrieved the applicants have approached this Tribunal seeking the following reliefs:- (a) to quash and set aside the impugned orders dated 23.6.1998 and 21.7.98 as far as the upgraded post of Assistant is concerned and to direct the respondents to place the applicants in the pay scale of Rs.5000-8000 with effect from 01.01.1986 or from the date they have been granted special pay of Rs.35/70 without subjecting them to any selection as such. They have further prayed that they should not be required to undergo any selection process as they had already undergone selection process at the time of granting special pay. Interim relief passed earlier was vacated on 27.11.1998 modifying that the action taken in pursuance of the impugned panel dated 22.02.1998 shall be subject to further final orders that may be passed in the OA.

4. The contention of the applicants is that the respondents ought not to have held a review DPC as no such stipulationwas made by the 5th PayCommission while

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recommending upgradation of 10% posts of UDC to that of Assistant. Further, the applicants had already undergone the selectionprocedure while being granted special pay. Therefore, it was not proper on the part of the respondents to have held a DPC again to select 10% UDC for the post of Assistant. The learned counsel for the applicants drew our attention to certain clarification issued in regard to special pay granted to certain post of UDC in the non-secretariat administrative offices. It was clarified under the Ministry of Finance OM dated 29th December, 1982 that the selection is to be made by the controlling authority on the suitability of a particular officer to enable to work in a post identified as carrying complex nature of work. Seniority cum fitness would not be a criterion for filling of such post. According to the applicants the criterion for grant of special pay was a proper selection/ positive act of selection and not merely onseniority cum fitness and therefore, having been selected once, they could not have been subjected to a further selection for the same post. The applicants were therefore anticipating that they would be placed in the higher scale of Assistant automatically. However, while their special pay was terminated they were not placed in the sale of Assistant.

5. The applicants also contend that in CPWD orders of upgradation of 10% post of UDC were issued on

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30.12.1997 upgradation was granted to those UDCs who were engaged in complex nature of work and who were getting special pay of Rs.70/- per month in the pre-revised scale. There was no DPC held. The applicants have worked in the higher post for long and since they were not adversely reported upon and they were competent to do the complex nature of job, they were continued on the special pay till the impugned order dated 23.6.1998 was issued. Thus, abruptly they have discontinued this special pay without show cause notice. It also violates the principles of natural justice. The registered association of which the applicants are members had also made a representation on 27.9.1998 to Respondent No.1 requesting to issue instructions to various officer for placing all the UDCs drawing special pay in the scale of Rs.5000-8000 and to fill up the remaining posts on the basis of selection as done in the past.

6. The respondents submit that they have gone strictly by the orders issued. The contention of the applicants that there was no pre condition of requiring of holding DPC is not correct. The government order dated 23rd June, 1998 made it very clear that the upgraded posts will stand merged with the post of Assistant redesignated from the post of erstwhile OS Grade-II and shall be placed by holding DPC as per the recruitment rules since the post of Assistants were redesignated after merging of the OS GRade-II.

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Therefore, the respondents rightly followed the recruitment rules for the post of OS Grade-II and held selection for the same. In the process, the applicants could not be selected. Withdrawal of the special pay was as a result of the recommendations of the 5th Pay Commission. Therefore, there was no need to issue any show cause notice.

7. The learned counsel for the applicant has drawn our attention to OM dated 19.3.1999 of the Government of India, Ministry of Finance, Department of Expenditure (Employment Cell) in this connection which was forwarded by the Ministry of Defence vide letter dated 09.4.1999. In this OM the Government of India took note of certain doubts which had been raised regarding procedure to be followed while granting special pay after examining the matter in consultation with the DOP&T Government decided that the following course of action may be adopted for placement of UDC carrying the scale of Rs.1200-2040 with special pay of Rs.70/- p.m. in the revised scale of Rs.5000-8000 as mentioned against Sl. No.8 of para B of the first schedule CCS (RP) Rules 1997. (a) UDC posted against 10% identified post may initially be placed in the scale of Rs.4000-6000 and allow special pay of Rs.140/- p.m. with effect from 01.01.1996. (b) Sanction may be issued to create additional posts of Assistant in the scale of Rs.5000-8000 equal to the number of 10% identified post of UDC carrying special

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pay of Rs.70/- (c) Against additional post so created UDC may be considered for promotion on the basis of seniority cum fitness. Their pay on promotion may be fixed in terms of FR 22 I (a) (i). Further, wherever UDCs are carrying special pay of Rs.140, this may be taken into account in fixation of pay. (d)From the date, the additional created posts of Assistants are filled up by promotion as mentioned in (c) above, the posts of UDCs carrying special pay of Rs.140 per month (pre-revised Rs.70) may be abolished. (e) If any UDC drawing a pay of Rs.140 (pre-revised Rs.70) does not get promotion to the post of Assistant in terms of para (b) above, he may be transferred and posted against an unidentified post of UDC not carrying special pay. From the date of transfer to the unidentified post the special pay Rs.140 may be discontinued. It was further stated that the existing orders on the subject stand modified to the extant mentioned in para (a) to (e) above. Thus, Government of India laid down an altogether new procedure for upgradation of the 10% posts of UDC to the post of Assistant as against the selection procedure followed by the respondents.

8. It has also been further submitted by the respondents that all the applicants have been promoted to the post of Assistant in the higher pay scale between 08th August, 1999 to 15th December, 2000. Some of them have also retired.

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9. We have heard learned counsel for both the sides and have also noted the latest clarification issued by the DOP&T. It is abundantly clear that 10% posts of UDCs to be upgraded to that of Assistants that the UDCs are to be selected on the basis of seniority cum fitness only and not on the basis of selection. Also in the light of the Memonrandum of the 5th Pay Commission there was no point in subjecting the applicants to a fresh selecetion. Further even though it was decided to fill up the redesignated posts of Assistants as per recruitment rules still when the posts of OS II had already been merged in the post of Assistant they no longer existed and therefore applying the recruitment rules of posts not in existence was not legally correct. The recruitment rules for the post of Assistant ought to have been considered according to which the posts are to be filled on the basis of seniority cum fitness. This view has now been confirmed amply by the OM dated 19.3.1999 whereby the new procedure has been laid down. In this view of the matter we hold that the applicants are entitled to be considered for selection on the basis of seniority cum fitness as per the new procedure laid down now. Therefore, we quash and set aside the impugned select panel dated 22.02.1998. The respondents shall consider the claims of the applicants for upgradation on the basis of the OM dated 19.3.1999 of the Ministry of

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Defence within a period of three months from the date of receipt of copy of this order. OAs are allowed, we do not order any costs.

(SHANKER RAJU)
MEMBER (J)

(SMT. SHANTA SHASTRY)
MEMBER (AO

Gajan